COURT NO. 3

Criminal Miscellaneous Application no.42 of 2003

Rakesh Sharma ….Applicant

Versus

Special Magistrate, CBI,
Dehradun …..Respondent

Hon'ble Irshad Hussain, J.

Heard Sri Ram Ji Srivastava, counsel for the applicant.

Sri U.K. Uniyal, counsel for the C.B.I.

Criminal miscellaneous application under section 482 Cr.P.C. was moved with a prayer to direct the Special Judicial Magistrate, C.B.I., Dehradun, Uttaranchal, not to proceed with criminal case no. 178 no. 2000, C.B.I. versus Rakesh Sharma and others as the said court has ceased to have jurisdiction in the subject matter of the case after issuance of notification conferring jurisdiction 18 districts of western Uttar Pradesh including district Ghaziabad to Special Judicial Magistrate, First Class, Ghaziabad. A notification was issued by the U.P. Government on 28.12.2001 in regard to the 18 districts and in pursuance thereof, the Allahabad High Court was pleased to issue notification dated 16.01.2002 in regard to the appointment of the Court Special Judicial Magistrate, First Class, Ghaziabad for the offence committed in the geographical areas mentioned in the said notification.

Copy of the chargesheet filed by the CBI against the applicant indicates that the offence was committed within the jurisdiction of district Ghaziabad (U.P.) which by virtue of the government order dated 28.12.2001 falls within the jurisdiction of the Court of Special Judicial Magistrate, Ghaziabad. By notification of the Allahabad High Court dated 16.01.2002 new court of Special Judicial Magistrate, First Class at Ghaziabad was created pursuant to the aforementioned government notification and above case now falls. within the jurisdiction of Special Judge Magistrate, First

Class, Ghaziabad and Special Judicial Magistrate, CBI, Dehradun now has no jurisdiction to proceed with the trial.

Apart from this, the provisions of section 91 of U.P. Reorganization Act, 2000, envisages that the proceedings pending before the appointed day in a court, tribunal, authority or officer in any area which on that day falls within the State shall stand transferred to the corresponding court, tribunal, authority or officer of that State. The provisions of said section 91 are similar to the provisions of section 89 of the Bihar Reorganization Act, 2000. The later provision came into consideration before the Apex Court in the case of **C.B.I. A.H.D. Patna Vs. Braj Bhushan Prasad & Ors., VII (2001) SLT 87** and on account of the fact that the occurrence took place in the part of State which now falls in Jharkhand State, the cases specified were directed to be transferred to the competent courts in Jharkhand State. The learned counsel for the petitioner contended that the law declared by the Supreme Court is the law of the land binding on all throughout the country in view of Article 141 of the Constitution and on this analogy the instant case has to be transferred to a court of competent jurisdiction, which in this case is the Court of Special Judicial Magistrate, first class, (CBI) Ghaziabad (U.P.). Having regard to the facts of the case the submission has force and has to be accepted.

Sri U.K. Uniyal has submitted that he has no objection if the case is transferred to the court at Ghaziabad.

The application is allowed. Criminal case no.178 no. 2000, C.B.I. versus Rakesh Sharma and others pending before the Special Judicial Magistrate, (CBI) Dehradun, Uttaranchal, is transferred to the Special Court of Judicial Magistrate, First Class, Ghaziabad.

26.03.2003/B. **(Irshad Hussain, J.)**